

DOCKET NO. AAN-CV20-6039670-S : SUPERIOR COURT
DIANNA PIAZZA : J.D. OF NEW HAVEN
V. : AT MILFORD
JOHN GALLAGHER and BEATRIZ : OCTOBER 9, 2020
GALLAGHER.

DEFENDANTS' REQUEST TO REVISE PLAINTIFF'S COMPLAINT

Pursuant to Practice Book Section 10-35, et. seq., the Defendants, John Gallagher and Beatriz Gallagher, hereby request that the Plaintiff revise her Complaint in the following manner:

FIRST REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count one paragraph 5 which states "In September of 2018, storm water runoff entered the property." (See Complaint, attached hereto as Exhibit "A").

II. REQUESTED REVISIONS:

As to Count I, paragraph 5, Defendants request that the Plaintiff revise her Complaint in such a manner as to state with particularity the exact date upon which the incident alleged occurred.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper "Whenever any party desires to obtain (1) a more complete or particular statement of the allegations of an adverse party's pleading, or (2) the deletion of any unnecessary, repetitious, scandalous,

impertinent, immaterial or otherwise improper allegations in an adverse party's pleading, or (3) separation of causes of action which may be united in one complaint when they are improperly combined in one count, or the separation of two or more grounds of defense improperly combined in one defense, or (4) any other appropriate correction in an adverse party's pleading.

In the instant matter, the Plaintiffs' Complaint, in sum, alleges that run-off from the Defendant's storm water drainage pipe caused damage to their property. However, the dates upon which the alleged incidents occurred are not specified in the Complaint.

In Count I paragraph 5, the Plaintiff alleges that "in September of 2018 storm water runoff entered the (Plaintiff's) property". That occurrence is thereafter referred to in the complaint as the "2018 incident".

As written, the Complaint fails to properly put the Defendants on notice of the Plaintiff's claim. The dates of the alleged occurrences is a material fact and should be specified in the complaint. As is, the Defendants are unable to form an intelligible response to the Complaint. Furthermore, the Defendants are unable to properly defend this claim without knowledge of the date upon which the alleged occurrence arose. Thus the Defendants seek a more complete or particular statement of the allegations in the Complaint.

IV. OBJECTION:

The Plaintiff is not required to plead the exact date the incident occurred as it is not an essential element of an action for nuisance. See Pestey v. Cushman, 259 Conn. 345 at 352-254

(Conn. 2002) (The court reviewed the essential elements of a cause of action for private nuisance and did not include nor reference that a Plaintiff is required to prove the exact date of the interference). The Plaintiff is alleging that stormwater runoff entered her property in the month of September of 2018. The Defendants should have no issue determining whether they were aware of an incident taking place during that concise time frame.

V. REPLY TO OBJECTION

Count I paragraph 5 of the Plaintiff's complaint does not set out a "concise time frame". The timeframe of "September, 2018" is overly broad. Concurrent, intervening or superseding causes may have occurred in "September, 2018" affecting Defendant's liability. Without a more detailed description of the date of loss, the Defendants are potentially being deprived of defenses otherwise available to them.

Furthermore, Count One is not a claim for nuisance. Count One is a claim for injunctive relief, the pleading of which does require a date certain, as does the Plaintiff's negligence claim. The Count sounding in negligence, Count III, refers back Count I paragraph 5, and therefore the negligence count does not state a date certain upon which the negligence claim is based. Therefore, it is incumbent upon the Plaintiff to state with particularity the exact date upon which the incident alleged occurred.

SECOND REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count one paragraph 8 which provides “In December of 2019, storm water runoff again entered the property.”

II. REQUESTED REVISIONS:

Defendants request that the Plaintiff revise her Complaint to state the exact date the incident alleged occurred.

III. REASON FOR REVISION:

See reason for first requested revision.

IV. OBJECTION:

The Plaintiff is not required to plead the exact date the incident occurred as it is not an essential element of an action for nuisance. See Pestey v. Cushman, 259 Conn. 345 at 352-254 (Conn. 2002) (The court reviewed the essential elements of a cause of action for private nuisance and did not include nor reference that a Plaintiff is required to prove the exact date of the interference). The Plaintiff is alleging that stormwater runoff entered her property in the month of September of 2018. The Defendants should have no issue determining whether they were aware of an incident taking place during that concise time frame.

V. REPLY TO OBJECTION

Count I paragraph 8 of the Plaintiff's complaint does not set out a “concise time frame”. The timeframe of “December, 2019” (referred to as September 2018 in the Plaintiff's Objection, above paragraph) is overly broad. Concurrent, intervening or superseding causes may have occurred.

Without a more detailed description of the date of loss, the Defendants are potentially being deprived of defenses otherwise available to them.

Furthermore, Count One is not a claim for nuisance. Count One is a claim for injunctive relief, the pleading of which does require a date certain. Therefore, it is incumbent upon the Plaintiff to state with particularity the exact date upon which the incident alleged occurred.

THIRD REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count two paragraph 13 which states “the defendants failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the plaintiff.”

II. REQUESTED REVISIONS:

As to Count II paragraph 13, Defendants request that the word “reckless” be removed.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper “Whenever any party desires to obtain(2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading,or (4) any other appropriate correction in an adverse party's pleading. In the instant matter, the Plaintiffs’ Complaint, in sum, alleges that run-off from the Defendant’s storm water drainage pipe caused damage to their property. In Count II

paragraph 13, the Plaintiff alleges that “The Defendants' failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the Plaintiff”. Count II is a claim for nuisance, not recklessness. There is no count for recklessness on behalf of the Plaintiff. The word “reckless” should be removed as it is only there to inflame the jury and is not part of the claim being made.

IV. OBJECTION:

"Punitive damages are awarded when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights." (emphasis added) Bhatia v. Debek, 287 Conn. 397 at 420 (Conn. 2008)(quoting Vandersluis v. Weil, 176 Conn.35 at 358 (Conn. 1978)).

In the instant matter, the Plaintiff has requested the court award attorney's fees and the cost of litigation in her prayer for relief. The court in Bhatia was clear that one of the requirements for obtaining punitive damages is evidence showing "reckless indifference to the rights of others". Id. at 358. The Defendants' request relies on the presupposition that the phrase "reckless" serves no purpose. The Plaintiffs purpose is to plead the facts required to request punitive damages.

FOURTH REQUESTED REVISION

I. PORTION OF PLEADING SOUGHT TO BE REVISED:

Count three paragraph 14.

II. REQUESTED REVISIONS:

As to Count III paragraph 14, Defendant seeks to delete the entire paragraph as it is duplicative of Count III paragraph 11.

III. REASON FOR REVISIONS:

Connecticut Practice Book Section 10-35 provides that a Request to Revise is proper

“Whenever any party desires to obtain ...(2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading.....

Count III paragraph 14 is duplicative of Count III paragraph 11 and should be removed for the sake of clarity in the pleadings.

IV. OBJECTION:

Under Connecticut law, "the essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and **actual injury.**" (emphasis added) (internal quotations omitted) Ryan Transportation, Inc. v. Mand G Associates, 266 Conn. 520 at 525 (Conn. 2003).

Count III paragraph 14 of the Plaintiffs complaint pleads facts to establish "actual injury"

which, as the court in Ryan Transportation, Inc. restated, is an essential element of a cause of action for negligence. The Plaintiff cannot revise her complaint to remove Count III paragraph 14 as such revision would remove from the Plaintiffs complaint an essential element of the cause of action of negligence.

V. REPLY TO OBJECTION

Defendants do not dispute that actual injury is an element of negligence, and do not suggest that the Plaintiff should remove the allegation of actual injury. Defendants merely point out that Count III paragraph 14 is duplicative of Count III paragraph 11 and should be removed for the sake of clarity in the pleadings. It is the identical paragraph within the same count.

THE DEFENDANTS,
BEATRIZ GALLAGHER &
JOHN GALLAGHER

By /s/425022

Stephen J. Leary

**Law Offices of Meehan, Roberts, Turret &
Rosenbaum**

108 Leigus Road, 1st Floor

Wallingford, CT 06492

Tel. # 203-294-7800

Juris # 408308

CERTIFICATION

This is to certify that all personal identifying information was redacted pursuant to *Practice Book Section 4-7*. This will further certify the foregoing was mailed via U.S. Mail, postage pre-paid or electronically delivered pursuant to *Practice Book Section 10-14* on this 9th day of October, 2020.

Attorney for Plaintiff

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_____/s/425022

Stephen J. Leary
Commissioner of the Superior Court

EXHIBIT “A”

RETURN DATE: SEPTEMBER 22, 2020

SUPERIOR COURT

DIANNA PIAZZA

J.D. OF ANSONIA/MILFORD

V.

AT MILFORD

JOHN GALLAGHER and
BEATRIZ GALLAGHER

AUGUST 7, 2020

COMPLAINT

FIRST COUNT- INJUNCTION

1. The plaintiff, Dianna Piazza (the "Plaintiff") is an individual residing at 67 Chamberlain Drive, Shelton, Connecticut (the "Property").
2. The defendants, John Gallagher and Beatriz Gallagher (collectively the "Defendants") are individuals residing at 71 Chamberlain Drive, Shelton, Connecticut ("71 Chamberlain").
3. The Defendants own, control and/or are otherwise responsible for maintaining 71 Chamberlain.
4. Prior to September of 2018, the Defendants had installed or continued to make use of a storm water drainage pipe (the "Pipe") located underneath the driveway of the Defendants' 71 Chamberlain residence.

5. In September of 2018, storm water runoff entered the Property (the "2018 Incident").

6. The 2018 Incident was the result of the Pipe's inability to properly facilitate the flow of storm water runoff in one or more of the following ways:

- a. the Pipe's diameter was inadequate for purposes of handling the flow of storm water runoff;
- b. the Pipe did not have a uniform diameter, thereby resulting in clogging and disruption of the flow of storm water runoff; and
- c. the Pipe was installed in such a manner that prevented it from receiving significant portions of the storm water runoff, thus causing storm water to disburse onto 71 Chamberlain and surrounding parcels including the Property rather than into the Pipe.

7. The storm water runoff that entered the Property as a result of the 2018 Incident unreasonably interfered with the Plaintiff's use of the Property in one or more of the following ways:

- a. it caused damage to and prevented the use of the Plaintiff's driveway and an adjacent concrete walkway;

- b. eroded a portion of the Property and altered the grading throughout the Property;
- c. it displaced rocks, landscaping and outdoor furniture throughout the Property;
- d. it changed the groundwater table resulting in recurrent sinkholes on the Property adjacent to the Plaintiff's driveway;
- e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and
- f. it caused damage to the Plaintiff's motor vehicle.

8. In December of 2019, storm water runoff again entered the Property (the "2019 Incident").

9. The 2019 Incident was the result of the Pipe's inability to properly facilitate the flow of storm water runoff in one or more of the following ways:

- a. the Pipe's diameter was inadequate for purposes of handling the flow of storm water runoff;
- b. the Pipe did not have a uniform diameter, thereby resulting in clogging and disruption of the flow of storm water runoff; and

c. the Pipe was installed in such a manner that prevented it from receiving significant portions of the storm water runoff, thus causing storm water to disburse onto 71 Chamberlain and surrounding parcels including the Property rather than into the Pipe.

10. The storm water runoff that entered the Property as a result of the 2019 Incident unreasonably interfered with the Plaintiff's use of the Property in one or more of the following ways:

- a. it caused damage to and prevented the use of the Plaintiff's driveway and adjacent concrete walkway;
- b. eroded a portion of the Property and altered the grading throughout the Property;
- c. it displaced rocks, landscaping and outdoor furniture throughout the Property;
- d. it changed the groundwater table resulting in recurrent sinkholes on the Property;
- e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and
- f. it caused damage to the Plaintiff's motor vehicle.

11. Unless the Pipe is replaced with a pipe that is properly designed and installed to prevent diverting storm water runoff onto the Property, the Plaintiff will suffer irreparable harm.

12. The Plaintiff has no adequate remedy at law to prevent or otherwise remediate the above-described interference.

SECOND COUNT- NUSIANCE

1-10. Paragraphs One through Ten of the First Count are restated as though fully contained herein.

11. As a result of the above-described interference with the Plaintiff's use and enjoyment of the Property, the Plaintiff has been damaged.

12. The Defendants knew or should have known that failing, neglecting, or otherwise refusing to remediate the condition on their property after the 2018 Incident would lead to future damage to the Plaintiff's Property.

13. The Defendants' failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the Plaintiff.

THIRD COUNT- NEGLIGENCE

1-6. Paragraphs One through Five and Paragraph Eight of the First Count are restated as though fully contained herein.

7. The Defendants have a duty to keep and maintain their 71 Chamberlain residence in a manner that will not result in damage to surrounding properties.

8. The Defendants have breached the above-described duty in one or more of the following ways:

- a. the Defendants failed, neglected or otherwise refused to repair or replace the Pipe;
- b. the Defendants failed, neglected, or otherwise refused to conduct regular inspections of the Pipe to ensure that it is free and clear of debris; and
- c. the Defendants failed, neglected, or otherwise refused to adequately landscape the area of 71 Chamberlain that surrounds the Pipe, thus allowing debris to enter the Pipe and prevent proper drainage of storm water runoff.

9. The 2018 Incident was a further result of the Defendants' breach of their duty to keep and maintain 71 Chamberlin in a manner that would not result in damage to the surrounding properties.

10. The Defendants knew or should have known that their breach would result in harm to the Plaintiff.

11. The Defendants' breach of the above described duty has resulted in severe damage to the Plaintiff's Property in one or more of the following ways:

- a. it caused damage to and prevented the use of the Plaintiff's driveway and an adjacent concrete walkway;
- b. eroded a portion of the Property and altered the grading throughout the Property;
- c. it displaced rocks, landscaping and outdoor furniture throughout the Property;
- d. it changed the groundwater table resulting in recurrent sinkholes on the Property adjacent to the Plaintiff's driveway;
- e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and
- f. it caused damage to the Plaintiff's motor vehicle.

12. The 2019 Incident was a further result of the Defendants' breach of their duty to keep and maintain 71 Chamberlin in a manner that would not result in damage to the surrounding properties.

13. The Defendants knew or should have known that their breach of the above described duty would result in harm to the Plaintiff.

14. The Defendants' breach of the above described duty has resulted in severe damage to the Plaintiff's Property in one or more of the following ways:
- a. it caused damage to and prevented the use of the Plaintiff's driveway and an adjacent concrete walkway;
 - b. eroded a portion of the Property and altered the grading throughout the Property;
 - c. it displaced rocks, landscaping and outdoor furniture throughout the Property;
 - d. it changed the groundwater table resulting in recurrent sinkholes on the Property adjacent to the Plaintiff's driveway;
 - e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and
 - f. it caused damage to the Plaintiff's motor vehicle.

WHEREFORE, the Plaintiff claims:

With respect to the First Count:

1. An injunction ordering the Defendants to replace the Pipe with a Pipe that is 48 inches in diameter throughout; and

With respect to the Second Count:

1. Money damages;
2. Punitive damages;
3. Post-judgment interest at the maximum rate allowable by law; and
4. Such other further and different relief that this Court may deem just and equitable.

With respect to the Third Count:

1. Money damages;
2. Post-judgment interest at the maximum rate allowable by law; and
3. Such other further and different relief that this Court may deem just and equitable.

THE PLAINTIFF

By: 

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RETURN DATE: SEPTEMBER 22, 2020

SUPERIOR COURT

DIANNA PIAZZA

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V.

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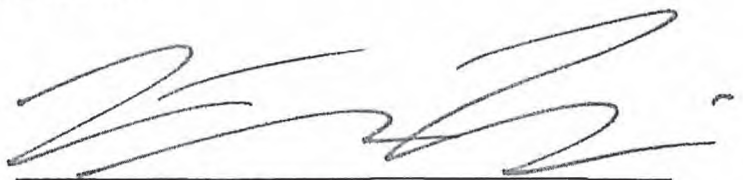
AUGUST 7, 2020

STATEMENT RE: AMOUNT IN DEMAND

This is to certify that the amount, legal interest or property in demand is more than
Fifteen Thousand (\$15,000.00) Dollars, exclusive of interest and costs.

THE PLAINTIFF

By:



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